

# Australian Energy and Resources Update: March 2014

Welcome to our monthly update on Australian energy and resources-related legal developments. This update is intended as a snapshot and not specific legal advice (nor an exhaustive coverage of all relevant issues). If you would like further information on any specific issue, please let us know.

## Australian Government announces Exploration Development Incentive

On 13 March 2014, the Commonwealth Minister for Industry, Ian Macfarlane, and the Assistant Treasurer, Senator Arthur Sinodinos, released a discussion paper entitled Exploration Development Incentive: Policy Design (the **discussion paper**) for public consultation. Feedback on the discussion paper will assist the Australian Government to introduce an exploration development incentive (**EDI**) aimed primarily at small to mid scale greenfields mineral exploration.

The Australian Government has committed to introduce an EDI to revive the mineral exploration industry in Australia following decreasing greenfields exploration. The EDI will be premised on tax reform applicable to investments made from 1 July 2014. It is proposed that a tax credit will be provided to Australian resident shareholders from junior mineral exploration companies who meet the EDI criteria and incur exploration expenditure. To target small to mid scale exploration, the EDI will be capped at \$100 million over the forward estimates and will

only apply to companies with no taxable income.

The discussion paper outlines several structural options available for the EDI and is seeking feedback on each option. The discussion paper seeks opinion on:

- ways of targeting junior mineral explorers;
- who will receive exploration credits;
- how to define 'eligible expenditure' and 'greenfields';
- how to cap the cost of the scheme; and
- how the exploration credit system will work.

Closing date for submissions: Friday, 4 April 2014. For more information visit:

<http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2014/Policy-Design-for-the-Exploration-Development-Incentive>.

## Reform proposals for the Western Australian electricity market

On 6 March 2014, the Western Australian Minister for Energy launched a review of the state's

## Key issues

- Australian Government announces Exploration Development Incentive
- Reform proposals for the Western Australian electricity market
- Northern Australia White Paper announced
- Productivity Commission draft public infrastructure report
- Productivity Commission final report on mineral and energy exploration
- House of Representatives Committee inquiry into green tape
- Senate inquiry on biodiversity offset conditions
- Queensland proposals to reduce mineral lease consultation
- Review of the Native Title Act

electricity market. The electricity market review ultimately seeks to reform the electricity market by:

- reducing production costs, electricity supply and electricity related services without

compromising safe and reliable supply;

- attracting private-sector participants that are of a scale and capitalisation that would support long-term stability and investment in the industry; and
- reducing Government exposure to energy market risks by reducing the industry's reliance on Government investment, underwriting or other financial support.

Despite being provided with over \$500 million a year in state government subsidies, electricity costs and prices in Western Australia have increased by around 70% between 2006 and 2013. Among other factors, the increases in costs are attributable to the industry's surplus generation capacity and weakening consumer demand due to the uptake of private solar energy systems.

The review will be undertaken by the state government's Finance Department in two phases: Phase 1 will assess the industry's structure, institutions and regulatory arrangements while Phase 2 will focus on detailed reforms that may be implemented. Phase 1 will be completed by 31 October 2014.

The terms of reference for Phase 1 of the review are available at:

[http://www.finance.wa.gov.au/cms/uploadedFiles/Public\\_Utility\\_Office/Electricity\\_Market\\_Review/Electricity\\_Market\\_Review-Phase-1-Terms-of-Reference.pdf](http://www.finance.wa.gov.au/cms/uploadedFiles/Public_Utility_Office/Electricity_Market_Review/Electricity_Market_Review-Phase-1-Terms-of-Reference.pdf).

## Northern Australia White Paper announced

The Australian Government has announced a review of the policy

platform and regulatory environment in Northern Australia, the results of which will be published within 12 months.

The White Paper on Developing Northern Australia, promised in the lead-up to last year's federal election, will aim to promote the development of Northern Australia over the next two, five, 10 and 20 years. Northern Australia currently faces significant challenges such as a sparse population, lack of infrastructure, and poor transport and service delivery costs. It does, however, have several natural advantages including its proximity to Asia, as well as its importance for industries such as agriculture, mining, energy and tourism.

The development of the White Paper is supported by a Strategic Partnership led by the Prime Minister, the Deputy Prime Minister, the Premiers of Queensland and Western Australia and the Chief Minister of the Northern Territory. The Strategic Partnership will be informed by an advisory group made up of business, community and indigenous leaders from across Northern Australia.

A Parliamentary Joint Select Committee on Northern Australia chaired by Warren Entsch MP will commence community consultation and public hearings in March and report to the Parliament in July 2014.

The committee's report, public submissions and direct consultation through the Strategic Partnership will inform the development of the White Paper.

A website has been created to provide information as the White Paper is developed. The terms of reference for the White Paper are available at:

<http://northernaustralia.dpvc.gov.au/>.

## Productivity Commission draft public infrastructure report

On 13 March 2014, the Australian Productivity Commission released its draft public infrastructure report. The report details the current funding and financing of public infrastructure projects by the Commonwealth, States and private sector and investigates the costs and benefits of different models for the future funding and financing of public infrastructure projects in Australia.

The report has identified the need for a comprehensive overhaul of processes in the assessment and development of public infrastructure projects. The report also found that:

- User charges for public infrastructure should be used to the fullest extent justifiable;
- The involvement of the private sector in infrastructure projects only delivers efficient gains if implemented well;
- There is evidence of a significant increase in the cost of constructing major public infrastructure;
- There is a competitive market for large public infrastructure projects; and
- There is scope to improve the public sector procurement practices and to lower bid costs for tendering parties which will potentially have benefits for project costs and timing.

Following the consideration of further submissions, a final report will be provided to the federal government in late May of this year.

The closing date for submissions is: Friday, 4 April 2014. For more information visit:

<http://www.pc.gov.au/projects/inquiry/infrastructure/draft>.

## Productivity Commission final report on mineral and energy exploration

The Australian Productivity Commission has released its final Inquiry Report on Mineral and Energy Resource Exploration which makes 22 recommendations on minimising non-financial barriers for resource explorers.

The release of the report comes at a time when the Government is starting to making inroads into its broad 'red-tape reduction' program across many business sectors in Australia. The recommendations focus on increasing the transparency of authorities responsible for the regulation of exploration licenses and streamlining the approval process. The report recommends that authorities responsible for the regulation of exploration licenses should:

- make the criteria on which applications for exploration licenses will be assessed readily available to the public, as well as the outcomes of the exploration licence assessments, including reasons why a resource explorer was successful; and
- ensure that the requirements to be met by resource explorers are not more onerous than required to meet the authority's policy objectives and are aligned with impact and risks associated with the nature, size and location of the exploration activity.

The report recommends that the Australian Government require

foreign exploration companies operating in Australia and private exploration companies to meet the disclosure requirements of exploration companies listed on the Australian Stock Exchange.

A copy of the Report can be found at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0003/128469/resource-exploration.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0003/128469/resource-exploration.pdf).

## House of Representatives Committee inquiry into green tape

The House of Representatives Standing Committee on the Environment will conduct an inquiry into, and report on, streamlining environmental regulation, green tape, and one stop shops.

On 27 February 2014 the Commonwealth Minister for the Environment, Greg Hunt referred the inquiry to the Committee in furtherance of the Australian Government's commitment to reduce green tape in environmental regulation.

The terms of reference provide for the committee "to inquire into and report on the impact of 'green tape' and issues relating to environmental regulation and deregulation", with particular focus on:

- jurisdictional arrangements;
- regulatory requirements and the potential for deregulation;
- the regulatory burdens and environmental benefits equilibrium;
- areas for improved efficiency and effectiveness of the regulatory framework; and
- legislation governing environmental regulation.

Interested persons and organisations can make submissions until Friday, 11 April 2014. For more information visit:

<http://www.aph.gov.au/environment>.

## Senate inquiry on biodiversity offset conditions

On 5 March 2014, a Senate inquiry was launched to report on the appropriateness and effectiveness of biodiversity offsets in federal project approvals. The inquiry was launched in response to concerns over the inadequacy of offset arrangements implemented by companies in their mining operations.

Offsetting policies theoretically encourage sustainable development by requiring developers to 'offset' any environmental degradation (such as land clearing for major projects) by, for example, conserving land of the same vegetation and habitat elsewhere. Many companies in the resources industry adopt these offsetting measures within the environmental impact assessment framework.

The inquiry will have particular regard to Whitehaven Coal's Maules Creek Project, Waratah Coal's Galilee Coal Project, North Queensland Bulk Port's Abbot Point Coal Terminal Capital Dredging Project and QGC's Queensland Curtis LNG project.

The Environment and Communications Committee is due to report on 16 June 2014, and submissions should be received by 4 April 2014. Its terms of reference can be found here:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Environmental\\_Offsets/Terms\\_of\\_Reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Environmental_Offsets/Terms_of_Reference).

## Queensland proposals to reduce mineral lease consultation

The Queensland Government has released its Mining Lease Notification and Objection Initiative discussion paper which makes 15 recommendations on how the regulatory burden of the notification and objection process for mining lease (ML) applications under the *Mineral Resources Act 1989* (Qld) (MRA) and obtaining an environmental authority under the *Environmental Protection Act 1994* (Qld) (EPA) could be reduced.

The discussion paper is the second consultation paper released by the Queensland Government in its aim to reduce the regulatory burden for small scale alluvial mining operations.

The recommendations focus on creating a notification and objection process that: (a) reflect the scale and risk of operations of proposed mining operation, (b) shortens project delays, (c) removes duplication of notices and (d) simplifies the process for applications. The key recommendations are:

- to limit the right to object to a low risk ML application to only directly affected landholders and local government;
- to remove the duplication of notification requirements that are required under both the MRA and EPA; and
- that compensation should not need to be agreed with the

landowners prior to the grant of a ML, but instead it should be able to be finalised up to three months after the grant of the license.

The recommendations have caused concerns among conservation and environmental groups as they will be restricted from opposing low risk ML applications unless they are directly affected landholders.

The Discussion Paper's public consultation period closed on 28 March 2014. A copy of the Discussion Paper can be found at <http://mines.industry.qld.gov.au/assets/legislation-pdf/mining-lease-notification-and-objection-discussion-paper.pdf>.

## Review of the Native Title Act

The Australian Law Reform Commission has released an issues paper to facilitate discussion on its review of the *Native Title Act 1993* (Cth) (NTA).

The review is focussed on two specific issues:

- Connection requirements relating to the recognition and scope of native title rights and interests, and;
- Any barriers imposed by the Act's authorisation and joinder provisions to claimants', potential claimants' and respondents' access to justice.

The issues paper sets out 35 specific questions focussing on:

- the presumption of continuity of native title rights, and whether

such a presumption should be enshrined in the NTA;

- the problems that arise for native title claimants in countering arguments of a "substantial disruption" to the practice of traditional laws and customs;
- whether there are significant problems in establishing the "traditional" nature of native title interests;
- whether native title rights and interests recognised by the NTA should be broadened to include rights of a commercial nature – this has proven to be a difficult issue in several native title cases brought before the courts;
- technical issues around the authorisation process that native title claimants are required to adopt in order to make claims under the NTA and otherwise access the rights granted by the NTA.

The closing date for submissions on the issues paper is 14 May 2014. A copy of the issues paper can be found here:

<http://www.alrc.gov.au/publications/native-title-ip-45>.

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HK-1038873-v1

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